IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1646 of 1999
In
SPECIAL CIVIL APPLICATION No. 10998 of 1998
With
CIVIL APPLICATION No. 15242 of 1999

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT & 1 - Appellant(s)
Versus
KHODABHAI KHIMABHAI CHAVDA - Respondent(s)

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Appearance :
MR UDAY BHATT, AGP for Appellant(s) : 1 - 2.
MR JV BHAIRAVIA for Respondent(s) : 1,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

and

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 02/08/2006

ORAL JUDGMENT

(Per : HONOURABLE MS. JUSTICE R.M.DOSHIT)

This Appeal preferred by the State Government under Clause 15 of the Letters Patent arises from the judgment and order dated 30th September, 1999 passed by the learned Single Judge in above Special Civil Application No.10998 of 1998. By impugned order, the learned Single Judge has quashed and set-aside the order of penalty of dismissal from service imposed upon the respondent (hereinafter referred to as, **"the delinquent"**). It has been further directed that "**no further action be taken in pursuance of this incidence and matter may be allowed to rest at that**."

At the relevant time, the delinquent was a Government servant and was posted as Manager, District Industries Centre, Surendranagar. Under the prevalent EXIM policy of the Government of India, the delinquent was required to process the applications for import licence made by the concerned industries and to make recommendations. On 2nd January, 1979 the delinquent recommended import licence in the sum of Rs.3 lakhs each in favour of five industries. Pursuant to the recommendations made by the

delinquent the said five applications were processed by the Controller of Imports and Exports, Rajkot (hereinafter referred to as, **"the Controller"**). After processing the said applications, the Controller granted licence to the said five industries for import of Stainless Steel (then a prohibited raw-material) in the sum of Rs.15,000=00 each. In the opinion of the Controller the said recommendations were made by the delinquent without proper verification and that the said conduct of the delinquent warranted an inquiry. On 14th September, 1982 the Joint Commissioner of Industries one Shri P.P.Patel made spot inspection of the said industries and found that the said industries were non-existing. Pursuant to the report made by the said Shri P.P.Patel the matter was referred to the Anti Corruption Bureau. The Anti Corruption Bureau, after making investigation, sent its report to the Gujarat Vigilance Commission. On 21st December, 1984 the Gujarat Vigilance Commission recommended that a disciplinary proceeding be held against the delinquent and certain other officers. Pursuant to the said report, on 18th June, 1994 the State Government issued a charge-sheet against the delinquent and thus initiated the disciplinary

proceeding. In sum and substance it was alleged that the delinquent had recommended import licence in the sum of Rs.3 lakhs each in favour of five industries without verifying the credential of each of the said industries with dishonest intention. The inquiry was entrusted to an Inquiry Officer. The Inquiry Officer submitted his report on 26th December, 1997. In the opinion of the Inquiry Officer the imputation of charge made against the delinquent was proved. The said report was accepted by the State Government. After furnishing copy of the report to the delinquent; after inviting his representation against the said report and in consultation with the Gujarat Public Service Commission, by order dated 14th December, 1998, the State Government dismissed the delinquent from service.

Feeling aggrieved, the delinquent preferred above Special Civil Application No.10998 of 1998 under Article 226 of the Constitution of India before this Court.

The learned Single Judge has held that the disciplinary proceeding against the delinquent was vitiated for more than one reason. First, the

disciplinary proceeding was held in breach of principles of natural justice in as much as the delinquent was not furnished the copy of the report of the preliminary inquiry held by the Anti Corruption Bureau and the report of one Shri K.Kailashnathan who had inquired about the matter after the Anti Corruption Bureau submitted its report. The delinquent was not allowed to cross-examine the departmental witness one Shri P.P.Patel though the said Shri P.P.Patel was examined in the disciplinary proceeding by the department. The learned Single Judge has also examined the imputation of charge made against the delinquent on merits. After considering the prevalent EXIM policy in detail, the learned Single Judge has held that in recommending the import licence to the concerned industries, the delinquent had not committed any misconduct nor the alleged dishonest intention or lack of integrity was proved by the State Government. The learned Single Judge has accordingly allowed the petition, quashed and set-aside the order of punishment and has, as recorded hereinabove, directed not to prosecute the matter further. Feeling aggrieved, the State Government has preferred the present Appeal.

Mr.Bhatt has assailed the judgment. He has submitted that the learned Single Judge has manifestly erred in holding that the disciplinary proceeding held against the delinquent was vitiated for breach of principles of natural justice. He has submitted that it is a settled principle of law that the preliminary inquiry report is not required to be furnished to the delinquent. He has submitted that Shri P.P.Patel, the then Joint Commissioner of Industries had made the spot inspection of the concerned industries on 14th September, 1982 and had submitted his report. He was examined in the disciplinary proceeding to prove the report submitted by him. The report was on record of the disciplinary proceeding. Copy thereof was furnished to the delinquent. No further evidence of the said Shri P.P.Patel was recorded. He, therefore, was not required to be offered for cross-examination by the delinquent. Even otherwise, mere breach of principles of natural justice would not vitiate the disciplinary proceeding unless the delinquent proves the prejudice caused to him. In the present case, the delinquent has not even alleged that for want of cross-examination of Shri P.P.Patel his defence was

prejudiced or adversely affected. In support of this submission, Mr.Bhatt has relied upon the judgment of the Hon'ble Supreme Court in the matter of **S.K.Singh v/s. Central Bank of India and others** [(1996)6 SCC 415]. He has next submitted that the learned Single Judge has committed a manifest error in examining the EXIM policy and in recording that the delinquent had not committed any misconduct. In doing so, the learned Single Judge has sat in appeal over the decision of the disciplinary authority. The said exercise undertaken by the learned Single Judge was beyond the scope of inquiry under Article 226 of the Constitution of India. In support, Mr.Bhatt has relied upon the judgments of the Hon'ble Supreme Court in the matters of **The High Court of Judicature at Bombay v/s. Shashikant S.Patil and another** [AIR 2000 SC 22]; of **Major General Inder Jit Kumar v/s. Union of India and others** [AIR 1997 SC 2085] and of **Beant Singh v/s. Union of India and others** [AIR 1977 SC 388].

The Appeal is contested by Mr.Bhairavia. He has supported the judgment of the learned Single Judge. He has submitted that an inherent prejudice was

caused to the delinquent by not allowing him a copy of the report of the aforesaid Shri K.Kailashnathan. He has submitted that the said Shri K.Kailashnathan had examined the matter and had expressed opinion in favour of the delinquent. The findings recorded by the said Shri K.Kailashnathan were, therefore, material and were necessitated to strengthen the defense of the delinquent. The action of the State Government in not furnishing the said report to the delinquent was ex-facie prejudicial to the delinquent. No further prejudice was, therefore, required to be proved by the delinquent. He has submitted that the entire inquiry was based upon the report submitted by the aforesaid Shri P.P.Patel. The said Shri P.P.Patel was, therefore, a material witness who did participate in the disciplinary proceeding. The delinquent was, therefore, required to be permitted to cross-examine the said Shri P.P.Patel. The said opportunity having been denied to the delinquent, the learned Single Judge has rightly interfered with the order of the punishment imposed upon the delinquent. He has also submitted that inordinate delay in initiating proceeding against the delinquent also shall prove fatal to the disciplinary proceeding. He has read out the report of the Inquiry

Officer and has submitted that the finding of guilt recorded by the Inquiry Officer was perverse and was based on surmises and presumption. He has submitted that there was no acceptable evidence on record to hold the delinquent guilty of committing a misconduct. In support of his submissions, Mr.Bhairavia has relied upon the judgments of the Hon'ble Supreme Court in the matters of **Beant Singh v/s. Union of India and others** [AIR 1977 SC 388]; of **Kuldeep Singh v/s. Commissioner of Police and others** [(1999)2 SCC 10]; of **P.V.Mahadevan v/s. MD, T.N.Housing Board** [(2005)6 SCC 636]; of **A.Pandurangam Rao v/s. State of Andhra Pradesh and others** [AIR 1975 SC 1922]; of **Narinder Mohan Arya v/s. United India Insurance Co. Ltd. and others** [AIR 2006 SC 1748] and of **Yoginath D.Bagde v/s. State of Maharashtra and another** [(1999)7 SCC 739].

We have perused the judgment of the learned Single Judge and the materials on record more particularly the report of the Inquiry Officer. We do agree with Mr.Bhatt that the report of the Anti Corruption Bureau and the report of the aforesaid Shri K.Kailashnathan were the preliminary reports of

the investigation made by them. In a disciplinary proceeding, the principles of natural justice do not require that report of such preliminary inquiry be furnished to the delinquent. All that is required to be furnished to the delinquent is the specific charge in which the inquiry is warranted and the materials required to bring home the charge. If the delinquent required any record or material to prove his innocence, such material also may be furnished to the delinquent. However, none of these calls for supply of the report of the preliminary inquiry. We also agree with Mr.Bhatt that the aforesaid Shri P.P.Patel was examined to prove the report submitted by him on 4th September, 1982. Indisputably, copy of the said report was furnished to the delinquent. It should be noted here that for the incidence of 1979 the aforesaid Shri P.P.Patel had submitted his report on 4th September, 1982. The disciplinary proceeding was initiated in 1994 i.e. 12 years thereafter. In the mean time, the said Shri P.P.Patel had retired from service and had reached an advanced age. He, therefore, sought exemption from being examined in disciplinary proceeding. The request being just and fair, was rightly granted by the Inquiry Officer.

We also agree with Mr.Bhatt that in exercise of power under Article 226 of the Constitution of India this Court is not supposed to sit in appeal over the decision of the disciplinary authority. Such an inquiry by the High Court is deprecated time and again. We are, however, of the view that the impugned judgment of the learned Single Judge does not warrant interference for two reasons. First, the disciplinary proceeding had been initiated against the delinquent after an inordinate delay. For the incidence of the year 1979, the State Government, having received the report of the aforesaid Shri P.P.Patel on 4th September, 1982 and the report of the Anti Corruption Bureau in the year 1984, did not initiate the disciplinary proceeding against the delinquent for another ten years i.e. until 18th June, 1994. The said delay has not been explained at all. Further, the learned Single Judge has, having considered the prevalent EXIM policy, recorded that under the prevalent EXIM policy the delinquent was empowered to recommend import licence in the sum of Rs.3 lakhs for a proposed industry. The factum that the said industries were not established even until the year 1982 would not invalidate the recommendation made by the delinquent nor such recommendation can be said to

have been made with dishonest intention. The learned Single Judge has held that the material on record did not establish dishonest intention or lack of integrity on the part of the delinquent. We concur with the said finding recorded by the learned Single Judge.

For the aforesaid reasons, we dismiss the Appeal with cost. Interim relief stands vacated. Civil Application stands disposed of.

In view of the dismissal of the Appeal, we direct that the delinquent be paid the wages for the period from the date of dismissal of the delinquent from service till the date he reached the age of superannuation and the retiral benefits which are withheld on account of his dismissal from service, as expeditiously as possible but not later than 31st December, 2006.

In the event, the State Government fails to pay the aforesaid amounts to the delinquent on or before 31st December, 2006 as directed, the State Government shall be liable to pay interest @ 8% per annum from the date of this order till the date such payments

are made.

(Ms. R.M.Doshit, J.) **(Harsha Devani, J.)**

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